from financial ruin. The cost of inaction is too great and the status quo is no longer an option. The status quo simply is not something we need to look to.

On another subject, today is a historic day in America. Right now, they are having opening statements in the Senate Judiciary Committee, Democrats and Republicans, regarding Sonia Sotomayor. She will, later today, testify before that committee as President Obama's nominee for the highest Court in our country. As we all know, she is the first Hispanic American to do so.

Judge Sotomayor has a wide range of experience, not just in the legal world but in the real world. Her understanding of the law is grounded not only in theory but also in practice. Her record and qualifications are tremendous. She has worked at almost every level of our judicial system—as a prosecutor, as a litigator, a trial court judge, and appellate judge.

That is the exact type of experience we need on the Supreme Court. When she is confirmed, she will bring to the bench more judicial experience than any sitting Justice had when they joined the Court.

Judge Sotomayor has been nominated by both Democratic and Republican Presidents. She has been confirmed twice by the Senate with strong bipartisan support. Her record is well known and well respected. We are committed to ensuring that she has a rigorous and reasonable confirmation hearing. We expect both sides to ask tough questions and we expect both the questions and their answers to be fair and honest before she is confirmed.

RECOGNITION OF THE MINORITY LEADER

The ACTING PRESIDENT pro tempore. The minority leader is recognized.

SOTOMAYOR CONFIRMATION HEARINGS

Mr. MCCONNELL. Mr. President, today the Senate Judiciary Committee will begin its hearings on the nomination of Judge Sonia Sotomayor to be an Associate Justice on the U.S. Supreme Court. The consideration of a Supreme Court nominee is always a historic event. Since our Nation's founding, only 110 people have served on the High Court, and 10 of those were nominated by George Washington. There are few duties more consequential for a Member of the U.S. Senate than to vote on a Supreme Court nominee.

This particular nominee comes before the Judiciary Committee with a compelling life story. Like so many other Americans before her, Judge Sotomayor has overcome great adversity. In this, she has reaffirmed once again that ours is a nation in which one's willingness to work hard and apply one's talents are the principal requirements for success. And yet, as we begin these hearings, it is important to remind ourselves that our obligation as Senators under the Constitution's advice and consent clause requires us to do more than confirm someone to a lifetime position on our Nation's highest court based on their life story. Rather, it requires us to determine whether he or she will be able to fulfill the requirements of the oath taken by all Federal judges, that they will, ''administer justice without respect to persons, and do equal right to the poor and to the rich, and that [they] will faithfully and impartially discharge and perform all the duties incumbent upon [them] under the Constitution and laws of the United States.''

The emphasis here is on the equal treatment of everyone, without respect to person, status, or belief, that everyone in America can expect that when they enter a courtroom, they will not be treated any differently than anyone else. That is what justice is, after all. And that is what Americans expect of our judicial system, equality under the law.

Now, President Obama has made it abundantly clear, as a Senator, as a candidate for President, and now as President, that he has a somewhat different requirement for his appointees to the Federal bench. He has repeatedly emphasized that his ''criterion'' for a federal judge is their ability to ''empathize'' with certain groups. That is a great standard, if you are a member of one of those specific groups. It is not so great, though, if you are not. So it might be useful to consider some of the groups who have found themselves on the short end of the ''empathy'' standard.

First, there are those who rely on the first amendment's right to engage in political speech. Then there are those Americans who want to lawfully exercise their right to bear arms under the second amendment. Next, those who want protection under the fifth amendment's requirement that private property cannot be taken for a public purpose without just compensation, and that it should not be taken for another person's preferred private use at all. Also, there are those who want protection from unfair employment practices under the 14th amendment's guarantee of the equal protection of the law.

I mention these specific groups because Judge Sotomayor has had to handle cases in each of these areas. And looking at her record, it appears the President has nominated just the kind of judge he said he would, someone who appears to have ''empathy'' for certain groups who appear before her, but not for others.

As I discussed last week, Judge Sotomayor kicked out of court the claims of New Haven, CT, firefighters who had been denied promotions because some minority firefighters had not performed as well as a group of mostly White firefighters on a race-neutral exam. The Supreme Court reversed her decision in this matter, her third reversal just this term, with all nine justices finding that she misapplied the law. Her treatment of this case, the Ricci case, has been criticized across the political spectrum as ''perfunctory'' and ''peculiar,'' and it called into question whether her dismissive handling of the firefighters' important claims was unduly influenced by her past advocacy in the area of employment preferences and quotas.

I also spoke last week about provocative comments Judge Sotomayor had made about campaign speech, including her claim that merely donating money to a candidate is akin to bribery. It is her prerogative to make such statements, as provocative as they may be. But it is not her prerogative as a judge to fail to follow clear Supreme Court precedent in favor of her political beliefs. Yet when she had the chance to vote on whether to correct a clear failure to follow Supreme Court precedent by her circuit in this very area of the law, she voted against doing so. Ultimately, the Supreme Court, in an opinion authored by Justice Breyer, corrected this error by her circuit on the grounds that it had failed to follow precedent.

There are other areas of concern.

Judge Sotomayor also brushed aside a person's claim that their private property had been taken in violation of the fifth amendment's ''takings clause.'' As in the Ricci case, her panel kicked the plaintiffs' claims out of court in an unsigned, unpublished, summary order, giving them only a brief, one paragraph explanation as to why. Moreover, in the course of doing so, she dramatically expanded the Supreme Court's controversial 2005 decision in Kelo v. New London. In Kelo, the Supreme Court broadened the meaning of ''public purpose'' that allows the government to take someone's private property. Judge Sotomayor, in the case of Didden v. Village of Port Chester, broadened the government's power even further.

Her panel's ruling in Didden now makes it easier for a person's private property to be taken for the purpose of conferring a private benefit on another private party. This result is at odds with both the plain language of the fifth amendment's takings clause, and with the Supreme Court's statements in Kelo. And, as in Ricci, she did it without providing a thorough analysis of the law. Her panel devoted just one paragraph to analyzing the plaintiffs' important Fifth Amendment claims. It is no wonder then that property law expert Professor Ilya Somin at George Mason University Law School called it ''one of the worst property rights decisions in recent years.'' Professor Richard Epstein at the University of Chicago College of Law called it not only ''wrong'' and ''ill thought out,'' but ''about as naked an abuse of government power as could be imagined.''

There is more. Judge Sotomayor has twice ruled that the second amendment

is not a fundamental right and thus does not protect Americans from actions by states and localities that prevent them from lawfully exercising their ability to bear arms. As with the Ricci and Didden cases, Judge Sotomayor gave the losing party's claims in these cases short shrift and did not thoroughly explain her analysis. In one case, she disposed of the party's second amendment claim in a mere one-sentence footnote. In the other case, which was argued after the Supreme Court's seminal second amendment decision in District of Columbia v. Heller, she gave this important precedent cursory treatment, devoting only one paragraph in an unsigned opinion to this important issue, which is unusual for a case of this significance.

The losing parties in these cases might not have belonged to the groups that the President had in mind when he was articulating his ''empathy'' standard. But they certainly underscore the hazards of such a standard. They had important constitutional claims, and they deserved to have their claims treated seriously and adjudicated fairly under the law, regardless of what Judge Sotomayor's personal and political agendas might be. Yet it strikes me that the losing parties in these cases did not in fact get the fair treatment they deserved.

Indeed, taken together, these cases strongly suggest a pattern of unequal treatment in Judge Sotomayor's judicial record, particularly in high-profile cases. This pattern is particularly disturbing in light of Judge Sotomayor's numerous comments about her view of the role of a judge, such as questioning a judge's ability to be impartial ''even in most cases,'' asserting that appellate courts ''are where policy is made,'' and concluding that her experiences and views affect the facts that she ''chooses to see'' in deciding cases.

Republicans take very seriously our obligation to review anyone who is nominated to a lifetime position on our Nation's highest court. That is why Senators have taken time to review Judge Sotomayor's record to make sure she has the same basic qualities we look for in any Federal judge: superb legal ability, personal integrity, sound temperament, and, most importantly, a commitment to read the law evenhandedly. At the beginning of this process, I noted that some of Judge Sotomayor's past statements and decisions raised concerns. As we begin the confirmation hearings, those concerns have only multiplied.

Boiled down, my concern is this: that Judge Sotomayor's record suggests a history of allowing her personal and political beliefs to seep into her judgments on the bench, which has repeatedly resulted in unequal treatment for those who stand before her.

But that is what these hearings are all about: giving nominees an opportunity to address the concerns that Senators might have about a nominee's record. In this case, the list is long.

So we welcome Judge Sotomayor as she comes before the Judiciary Committee today. And we look forward to a full and thorough hearing on her record and her views.

I yield the floor.

RESERVATION OF LEADER TIME

The ACTING PRESIDENT pro tempore. Under the previous order, the leadership time is reserved.

NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 2010

The ACTING PRESIDENT pro tempore. Under the previous order, the Senate will proceed to the consideration of S. 1390, which the clerk will report.

The assistant legislative clerk read as follows:

A bill (S. 1390) to authorize appropriations for fiscal year 2010 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe military personnel strengths for such fiscal year, and for other purposes.

The ACTING PRESIDENT pro tempore. The Senator from Michigan.

Mr. LEVIN. Mr. President, on behalf of the Armed Services Committee, I am pleased to bring S. 1390, the National Defense Authorization Act for Fiscal Year 2010, to the Senate floor. This bill will fully fund the year 2010 budget request of $680 billion for national security activities in the Department of Defense and the Department of Energy.

The Senate Armed Services Committee has a long tradition of setting aside partisanship and working together in the interest of the national defense. This year follows that tradition. I am pleased that S. 1390 was reported to the Senate on a unanimous 26-to-nothing vote of the committee. This vote stands as a testament to the common commitment of all of our Members to supporting our men and women in uniform. I particularly thank Senator MCCAIN, our ranking minority member, for his strong support throughout the committee process and, of course, for the dedication he has shown to national defense throughout his Senate career.

Earlier this year, the Armed Services Committee reported out the Weapons Systems Acquisition Reform Act of 2009 with similar bipartisan support. In less than 2 months, we were able to get the bill passed by the Senate, complete conference with the House, and have the President sign it into law. It is my hope that we will be able to move with similar dispatch on the bill now before us.

This bill contains many important provisions that will improve the quality of life of our men and women in uniform, provide needed support and assistance to our troops on the battlefields in Iraq and Afghanistan, make the investments we need to meet the challenges of the 21st century, and require needed reforms in the management of the Department of Defense.

First and foremost, the bill before us continues the increases in compensation and quality of life that our service men and women and their families deserve as they face the hardships imposed by continuing military operations around the world. For example, the bill contains provisions that would, first, authorize a 3.4-percent across-the-board pay raise for all uniformed military personnel, and that represents half a percent more than the budget request and the annual rate of inflation. The bill authorizes a 30,000 increase in the Army's Active-Duty end strength during fiscal years 2011 and 2012 in order to increase dwell time and reduce the stress created by repeated deployments. The bill authorizes payment of over 25 types of bonuses and special pays aimed at encouraging enlistment, reenlistment, and continued service by Active-Duty and Reserve military personnel. We increase the authorization for the Homeowners' Assistance Program by $350 million in order to provide relief to homeowners in the Armed Forces who are required to relocate because of base closures or change of station orders. And we increase the maximum amount of supplemental subsistence allowance from $500 to $1,100 per month to ensure that servicemembers and their families do not have to be dependent on food stamps.

The bill also includes important funding and authorities needed to provide our troops the equipment and support they will continue to need as long as they remain on the battlefields in Iraq and Afghanistan. For example, the bill contains provisions that would provide $6.7 billion for the Mine Resistant Ambush Protected, MRAP, vehicle fund, including an increase of $1.2 billion above the President's budget request for MRAP all-terrain vehicles which will be deployed in Afghanistan. The bill fully funds the President's budget request for U.S. Special Operations Command and adds $131 million for unfunded requirements identified by the commander of Special Operations Command. The bill provides full funding for the Joint Improvised Explosive Device Defeat Organization to continue the development and deployment of technologies to defeat these attacks. And we provide nearly $7.5 billion to train and equip the Afghan National Army and the Afghan National Police so they can carry more of the burden of defending their own country against the Taliban.

The bill would also implement most of the budget recommendations made by the Secretary of Defense to terminate troubled programs and apply the savings to higher priority activities of the Department. For example, the bill will terminate the Air Force Combat Search and Rescue-X helicopter program, CSAR–X. It will terminate the VH–71 Presidential helicopter. It would cancel and restructure the manned ground vehicle portion of the Army's